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No. 06-061432

In The

Supreme Court of the United States

ALMERIA CHRISTIANSEN, in her capacity as the Administrator of the Estate of WESLEY J. CHRISTIANSEN, and in her personal capacity,

Petitioner,

v.

KENNY CHRISTIANSEN,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Alaska

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. May a state court, considering an admiralty wrongful death claim under the saving to suitors clause, apply a state statute granting immunity as to all liability and preclude recovery by the claimant on a federal maritime tort?

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PETITION FOR WRIT OF *CERTIORARI*

Almeria Christiansen respectfully petitions for a writ of *certiorari* to review the judgment of the Alaska Supreme Court in this case.

OPINIONS BELOW

Christiansen v. Christiansen, 152 P.2d 1144 (Alaska 2007). (Appendix 1)

Christiansen v. Christiansen, Final Judgment Case No. 3KO-02-262CI (December 7, 2004). (Appendix 12)

JURISDICTION

The judgment of the Supreme Court of Alaska affirming the judgment of the trial court was entered on January 26, 2007. The jurisdiction of this court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art. III, § 2

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; – to all cases affecting ambassadors, other public ministers and consuls; – to all cases of admiralty and maritime jurisdiction; – to controversies to which the United States shall be a party; – to controversies between

two or more states; – between a state and citizens of another state; – between citizens of different states; – between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

28 U.S.C. § 1333 Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

A.S. 04.21.020. Civil Liability of Persons Providing Alcoholic Beverages.

(a) Except as provided under (b) and (d) of this section, a person who provides alcoholic beverages to another person may not be held civilly liable for injuries

resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080-04.11.220 or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

(b) A person who sells or barters an alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable (1) to the recipient or another person for civil damages if, while under the influence of the alcoholic beverage, the person receiving the alcoholic beverage engages in conduct that results in civil damages and the recipient's being under the influence of the alcoholic beverage substantially contributes to the civil damages; and (2) for the cost to the state or a political subdivision of the state to criminally prosecute a person who receives an alcoholic beverage from a person who violates AS 04.11.010 if the prosecution results from the violation of AS 04.11.010 described in this subsection.

(c) In an action under (b) or (d) of this section, it is not a defense that the person receiving the alcoholic beverage voluntarily consumed the alcoholic beverage or that the person receiving the alcoholic beverage was voluntarily under the influence of the alcoholic beverage.

(d) A person who knowingly furnishes or delivers an alcoholic beverage to a person under 21 years of age

in violation of AS 04.16.051 is civilly liable to the recipient or another person for civil damages if, while under the influence of the alcoholic beverage, the person receiving the alcoholic beverage engages in conduct that results in civil damages and the recipient's being under the influence of the alcoholic beverage substantially contributes to the civil damages.

(e) In this section, "civil damages" includes damages for personal injury, death, or injury to property of a person, including the state or a political subdivision of the state.

STATEMENT OF FACTS

This is a maritime wrongful death action brought against the owner and operator of the F/V Mekenna C, a fishing vessel, by the widow and personal representative of Wesley Christiansen, who fell from the dock float in Old Harbor, Alaska, after a drinking party aboard the F/V Mekenna C.

On December 1, 2000, Wesley Christiansen and George Gatter, were returning to their village of Old Harbor, Alaska, after duck hunting. Upon arriving at Old Harbor City Dock, the two encountered the F/V Mekenna C, a fishing vessel owned and captained by Wesley's cousin, Kenny Christiansen. The F/V Mekenna C, which was docked at the time, was returning from a private deer hunting charter, and spending the night in Old Harbor in transit to Kodiak, Alaska. Wesley and George Gatter boarded the vessel and throughout the evening, a number of people from the village and other boats joined the party aboard the F/V Mekenna C. Everybody was drinking to one degree or another, and the reports of the evening's

events are somewhat clouded by the resulting alcoholic haze and the passage of time.

Wesley was visibly intoxicated when he boarded the boat and joined the party continuing to drink while on the vessel for several hours. At trial there was evidence that Kenny provided alcohol consumed during the party and that there was excessive drinking on the boat by all the participants. At all times, the captain and owner of the boat, Kenny Christiansen, was aboard, and Kenny had substantial contact with Wesley aboard the vessel sufficient to determine Wesley's level of intoxication.

At some point in the night, Kenny Christiansen went to his bed aboard the vessel, but the "partying" continued. At some latter point in the evening, Wesley announced that he needed to urinate. One of the passengers on the vessel told Wesley to urinate off the end of the float, despite the presence of a head on the vessel. Wesley was not seen again until his body was discovered floating in the harbor by another passenger who was also urinating off the boat. The evidence is conflicting as to whether Wesley disembarked to the dock or used the bow of the vessel. While there was no witness to the accident, the Alaska State Troopers concluded that Wesley disembarked off the vessel and fell off the end of the icy dock into the water to his death. Unquestionably, alcohol combined with the icy and slippery conditions on the boat and dock were contributing factors in Wesley's death.

Wesley's widow and children brought this maritime wrongful death action against Kenny, in his capacity as the owner and operator of the F/V Mekenna C, in Alaska State Superior Court. Kenny filed a pre-trial motion for summary judgment arguing that he owed no legal duty to

the decedent under Alaska's social host immunity statute.[1] Almeria opposed arguing that Kenny Christiansen, as owner and captain of the boat owed a general duty of reasonable care to Wesley under federal maritime law as well as specific duties of care respecting safe disembarkment from the vessel[2] and a duty to control alcohol use on the vessel.[3]

The trial judge entered partial summary judgment for Kenny Christiansen holding that 1) Alaska's social host statute provided immunity from any liability that may exist under Federal maritime law, 2) Almeria Christiansen may not recover from Kenny Christiansen based upon Wesley Christianson's intoxication from alcohol served aboard the F/V Mekenna C, and 3) holding that the duty of safe debarkation did not apply to this case. The case

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[1] A.S. 04.21.020; *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996); *Mulvihill v. Union Oil Co.*, 859 P.2d 1310 (Alaska 1993).

[2] Generally, the owner and captain of a ship owe a duty of exercising reasonable care respecting persons boarding and disembarking a ship. *Kermerac v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959).

[3] *Thier v. Lykes Bros., Inc.*, 900 F. Supp. 864, 866 (S.D. Tex. 1995). [ship owner was found negligent in failing to monitor alcohol consumption aboard vessel, fostering party atmosphere onboard, and failing to prohibit drunk officer from driving where such negligence was the proximate cause of cadet's injuries]. Traditionally, drinking aboard a vessel presents an obvious potential hazard to maritime commerce, particularly in Alaska. *See* generally *Hazelwood v. State*, 962 P.2d 196 (Alaska 1998) (alcohol contributing factor to Exxon Valdez oil spill). As one court noted, "Certainly the sea holds enough perils for a sailor, even a sober one." *Reyes v. Vantage Steamship Co.*, 558 F.2d 238, 245 (5th Cir. 1997) Indeed, Courts have found that a vessel owner providing alcohol to crewmembers in quantity sufficient to cause intoxication made the ship unseaworthy or, was clear negligence. Id.

proceeded to trial on the narrow theory that Wesely slipped upon dock ice caused by the vessel.

At trial, the jury was instructed that Kenny had immunity from any injuries caused by alcohol provided to Wesely on Kenny's boat under Alaska's social host statute. Not surprisingly, the jury returned a verdict in favor of the Defendant.

Almeria appealed to the Alaska Supreme Court. Both the trial court and the Alaska Supreme Court assumed that admiralty jurisdiction and maritime law governed the case.[4] The Courts also implicitly assumed that in such actions, the state courts must apply the same substantive law as would be applied had the suit been instituted in admiralty in a federal court.[5] The Alaska Supreme Court, however, held that the "exercise of admiralty jurisdiction . . . does not result in the automatic displacement of state law."[6] The Court went on to note that the application of a state law which provided immunity from liability arising under maritime law did not "work a material prejudice to the characteristic features of [maritime] law and would not

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[4] App. 4; Whether admiralty jurisdiction and maritime law governs a case is determined by a two-prong test: i.e., the action needs to accrue upon or in navigable waters, and the incident must bear a "significant relationship to traditional maritime activity. *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972).

[5] *Brown v. State*, 816 P.2d 1368, 1370 (Alaska 1991); *Nunez v. Am. Seafoods*, 52 P.3d 720, 722 (Alaska 2002); *Shannon v. City of Anchorage*, 478 P.2d 815, 818 (Alaska 1970). Of course, the United States Constitution extends federal judicial powers to "all cases of admiralty and maritime jurisdiction." U.S. Const. Art. III, § 2, cl. 9. State courts have concurrent jurisdiction to consider admiralty claims pursuant to the "saving to suitors" clause. 28 U.S.C. § 1333(1).

[6] Appendix 4.

interfere with the proper harmony and uniformity of maritime law in its international and interstate relations."[7] The Alaska Supreme Court upheld the verdict below.

REASONS FOR GRANTING THE PETITION

1. THE ALASKA SUPREME COURT SERIOUSLY MISAPPLIED FEDERAL MARITIME LAW IN SUCH A WAY THAT INTERFERES WITH THE PROPER HARMONY AND UNIFORMITY OF MARITIME LAW IN ITS INTERNATIONAL AND INTERSTATE RELATIONS.

Under general maritime law, a wrongful death cause of action is cognizable as against the owner of a vessel regardless of whether the decedent was a seaman or not.[8] The owner of a vessel owes the duty of exercising reasonable care to all who are on board for purposes not inimical to his legitimate interests.[9] A wrongful death cause of action arises from a breach of that duty, the proximate cause of which results in death. More specifically, Federal courts have consistently found that this general duty of care extends to the dispensing of alcohol aboard a vessel to either guests or crew.[10] Thus, the vessel owner may be held

[7] Id., pp. 4-5.

[8] *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970). *See Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811, 819, 121 S.Ct. 1927, 1932-33, 150 L.Ed.2d 34, 42 (2001) (clarifying that wrongful death cause of action applicable in death of non-seaman).

[9] *Kermerac v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959).

[10] *Thier v. Lykes Bros., Inc.*, 900 F. Supp. 864, 866 (S.D. Tex. 1995); *Reyes v. Vantage S.S. Co., Inc.*, 558 F.2d 238, 244 (5th Cir. 1977),

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liable under maritime law if death is proximately caused by a vessel owner failing to exercise reasonable care with respect to the use of alcohol aboard his vessel.[11]

The Alaska Court's decision in *Christiansen*, however, injects profound disharmony into maritime jurisprudence because the problem of alcohol-related accidents has been a subject of strenuous debate and commentary resulting in wide variation among the states respecting liability in alcohol related accidents and death.[12] As a general matter, there appear to be two dominant theories of liability for alcohol related accidents arising out of notions of proximate cause: i.e., 1) the proximate cause of the injury is the consumption of the alcoholic beverage, or 2) the proximate cause of the injury is the negligent furnishing of alcohol.[13] Of course, there are variations on these themes, including the suggestion that courts should use the concept of proximate cause to assign liability to any party whose action has contributed to an accident in a significant way, while using principles of fault/liability apportionment to determine how liability is ultimately divided between

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modified, 609 F.2d 140 (5th Cir. 1980); *Young v. Players Lake Charles, L.L.C.*, 47 F. Supp. 2d 832 (S.D. Tex. 1999).

[11] Id.

[12] *See*, e.g., Note, *Social Host Liability: Am I My Brother's Keeper?*, 21 New Eng. L. Rev. 351 (1985-86); Note, *Social Host Liability For Injuries Caused By The Acts of an Intoxicated Guest*, 59 N.D. L. Rev. 445 (1983); Comment, *The Continuing Search for Solutions to the Drinking Driver Tragedy and the Problem of Social Host Liability*, 82 N.W. U. L. Rev. 403 (1988); Comment, Crespin v. Largo Corporation *and the Legislative Response: The Turbulent State of Dram Shop Liability in Colorado*, 57 U. Colo. L. Rev. 419 (1986).

[13] Shore, *Social Host Liability in North Carolina: Did the Supreme Court Get It Right in* Hart v. Ivey*?*, 71 N.C.L. Rev. 2149, 2149 (Sept. 1993).

supplier and imbiber.[14] The net effect of this nationwide debate is substantial variation in policy and law among the states respecting social host and dramshop liability.

Several states have recognized common law social host liability.[15] Some State's do not recognize social host liability arising out of common law, or statute.[16] And some states, like Alaska, provide social host immunity by statute.[17] In sum, a minority of states – only 15 other

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[14] Note, *Negligence – Social Host Liability – Social Hosts Not Liable For Accidents Caused By Intoxicated Guests*, 102 Harv. L. Rev. 549, 553 (December, 1988).

[15] E.g., Delaware – *DiOssi v. Maroney*, 548 A.2d 1361 (Del. 1988) (under condition of premises liability only); New Hampshire – *Hickingbotham v. Burke*, 140 N.H. 28, 662 A.2d 297 (N.H. 1995) (social host liability where an underage person was served); North Carolina – *Hart v. Ivey*, 332 N.C. 299, 420 S.E.2d 174 (N.C. 1992) (social host liability where an underage person was served at a party); Massachusetts – *McGuiggan v. New England Tel. and Tel. Co.*, 398 Mass. 152, 496 N.E.2d 141, 143 n. 5 (Mass. 1986); New Jersey – *Kelly v. Gwinnell*, 96 N.J. 538, 476 A.2d 1219 (N.J. 1984); In New Jersey, the legislature limited the holding in *Kelly*. *See Wagner v. Schlue*, 255 N.J. Super. 391, 605 A.2d 294, 295 (N.J. Super. Ct. 1992); California – *Clendening v. Shipton*, 149 Cal. App. 3d 191, 196 Cal.Rptr. 654 (Cal. App. 1983). In California, the legislature effectively reversed *Clendening*. *See* Cal. Bus. & Prof. Code 25602(b), (c) (West 2006); Connecticut – *Rangel v. Parkhurst*, 64 Conn. App. 372, 779 A.2d 1277, 1281-82 (Conn. 2001); Rhode Island – *Martin v. Marciano*, 871 A.2d 911 (R.I. 2005); Indiana – *Ashlock v. Norris*, 475 N.E.2d 1167 (Ind. App. 1985).

[16] E.g., Washington – *Burkhart v. Harrod*, 110 Wash. 2d 381, 755 P.2d 759 (1988); Florida – *Bankston v. Brennan*, 507 So.2d 1385 (Fla. 1987); Minnesota – *Holmquist v. Miller*, 367 N.W.2d 468 (Minn. 1985); Mississippi – *Boutwell v. Sullivan*, 469 So.2d 526 (Miss. 1985); Missouri – *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547 (Mo. 1987); New York – *Conigliaro v. Franco*, 122 A.D.2d 15, 504 N.Y.S.2d 186 (N.Y. App. Div. 1986); Alabama – *Martin v. Watts*, 513 So.2d 958, 963 (Ala. 1987).

[17] E.g., Colorado – 5 Colo. Rev. Stat. 2-47-128.5(4) (1990 Supp.) explained in *Charlton v. Kimata*, 815 P.2d 946 (Colo. 1991); California –

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states – are similarly situated to Alaska by specifically providing, by either legislative action or judicial determination, that social hosts are not liable for negligent actions in providing alcohol.[18] Similarly, in the related area of dramshop liability, the states vary widely. Of the fifty states in the United States, only ten have failed to enact dram shop statutes.[19] The courts of five of these states[20] currently hold dram shops liable for third party damages, while the other five states hold that dram shops are not liable for third party injuries.[21] Forty states have enacted dram shop acts with widely varying terms and conditions addressing dram shop liability for third party damages.[22]

As a result of these wide variations of law and policy among the states, the rule of law announced by the Alaska Supreme Court in *Christiansen*, if applied nationally, would result in wide variation in result respecting alcohol related maritime tort claims. Given the relatively high

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Cal. Bus. & Prof. Code § 25602 (West 1985), Cal. Civ. Code § 1714 (West 1985); Iowa – Iowa Code § 123.49 (1991); Wis. Stat. Ann. § 125.035 (West 1989); Wisconsin – Wis. Stat. § 125.035. *See Doering v. WEA Ins. Group*, 193 Wis. 2d 118, 532 N.W.2d 432 (1995); South Dakota – SDCL 35-11-2.

[18] Alaska, Arizona, Arkansas, California, Florida, Illinois, Iowa, Kansas, Maryland, Minnesota, Missouri, New York, Oklahoma, South Dakota, Washington, and West Virginia. *See* Goldberg, *Social Host Liability for Serving Alcohol*, 28 Trial, March 1992, at 31, 32.

[19] Delaware, Hawaii, Kansas, Maryland, Nebraska, Oklahoma, South Carolina, Virginia, Washington and West Virginia. *See* Votava, Comment: *Missouri Dram Shop Liability: Last Call For Third Party Liability?*, 69 UMKC L. Rev. 587, 596-597 (Spring, 2001).

[20] Hawaii, Oklahoma, South Carolina, Washington and West Virginia.

[21] Votava, *supra*, at 596-597.

[22] Id., at 598.

nexus between accidental death and alcohol, alcohol would become a significant focus in maritime tort claims, with widely varying results depending upon the state having the greatest nexus. In essence, if allowed to stand, there would be no coherent maritime law respecting alcohol related maritime torts.

The Alaska decision in *Christiansen* directly conflicts with the decisions in the Federal 5th Circuit, and the Iowa and Louisiana state courts respecting a similar Louisiana law that grants immunity to providers of alcohol from liability for the actions of those to whom they sell or serve alcohol.[23] In *Young v. Players Lake Charles, L.L.C.*, 47 F. Supp. 2d 832 (S.D. Tex. 1999) the Court noted that generally Federal courts had recognized maritime tort liability for negligently providing alcohol aboard a vessel.[24] The court held that application of the Louisiana anti-dram shop immunity statute was inconsistent with maritime law. The Louisiana Court of Appeals has concurred holding, "the application of substantive admiralty law preempts the application of Louisiana [anti-dram shop liability] law."[25] In commenting on this, the Iowa Supreme Court approvingly commented, "the problem [with applying state immunity statutes] is that application of some state laws – like the Louisiana anti-dram shop law at issue in *Young* – would leave innocent parties without a

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[23] *See* La. Rev. Stat. Ann. § 9:2800.1 (West 1986).

[24] *See Thier v. Lykes Bros., Inc.*, 900 F. Supp. 864, 866 (S.D. Tex. 1995); *Reyes v. Vantage S.S. Co., Inc.*, 558 F.2d 238, 244 (5th Cir. 1977), *modified*, 609 F.2d 140 (5th Cir. 1980).

[25] *Quinn v. St. Charles Gaming Co.*, 815 So.2d 963, 966 (La. App. 2002).

remedy for wrongs committed by navigable dram shops."[26] Clearly, there is substantial disagreement respecting the application of state law to alcohol related maritime tort liability.

There is a clear need for uniformity in maritime law respecting alcohol related personal injury, wrongful death and survivor actions. State law social host immunity and dram shop statutes and common law doctrines vary from state to state. Given the well known correlation between death/injury and alcohol use, state law variations would clearly inject widely varying results in alcohol related maritime wrongful death claims, so as to undermine uniform application of maritime law in wrongful death suits nationwide. The Court should grant review of the *Christiansen* decision to clarify whether and to what extent maritime alcohol related wrongful death claims are supplemented by state law.

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[26] *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 147 (Ia. 2002). In that case, the Iowa Supreme Court applied Iowa state law imposing dram shop liabililty commenting, "But, in Iowa, where the state law remedy available to plaintiffs such as Morales' children proves more generous than relief under general maritime negligence law would be, we are convinced that the 'humane and liberal character' of admiralty law described in *Yamaha Motor* compels the application of the more beneficent state law. In other words, in the absence of a comprehensive federal scheme with which Iowa's law would conflict, we are convinced plaintiffs were entitled to pursue their state law claim against Argosy under" Iowa law. Id.

2. THE ALASKA SUPREME COURT SERIOUSLY MISAPPLIED FEDERAL LAW IN SUCH A WAY TO MATERIALLY PREJUDICE THE CHARACTERISTIC FEATURES OF MARITIME LAW.

An equally disturbing implication of the *Christiansen* decision is the extent that Alaska application of state law immunity statutes "materially prejudice" the fundamental features of maritime law. As noted above, the federal and state courts that have addressed the subject have generally held that a vessel owner may be held liable for his failure to adequately supervise the use of alcohol on his vessel. Specifically, in *Thier v. Lykes Bros., Inc.,*[27] a vessel owner was found negligent in failing to monitor alcohol consumption on board a vessel, fostering a party atmosphere, and failing to prevent drunken officer from driving. Federal courts have consistently held that a vessel owner has a duty to adequately supervise the use and dispensing of alcohol aboard his vessel.[28] It is this clear statement of duty that defines the "characteristic features of maritime law." In contrast, it is equally clear that under Alaska state law, a social host is immune from such liability.[29]

The two approaches respecting the legal implications of alcohol related tort are irreconcilable. Law and policy supporting immunity in this area clearly conflicts with the "characteristic features of maritime law" which impose liability based upon the view that the proximate cause of

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[27] 900 F. Supp. 864, 866 (S.D. Tex. 1995).

[28] *Reyes v. Vantage S.S. Co., Inc.*, 558 F.2d 238, 244 (5th Cir. 1977), *modified*, 609 F.2d 140 (5th Cir. 1980); *Young v. Players Lake Charles, L.L.C.*, 47 F. Supp. 2d 832 (S.D. Tex. 1999).

[29] A.S. 04.21.020; *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996); *Mulvihill v. Union Oil Co.*, 859 P.2d 1310 (Alaska 1993).

an alcohol related death or injury is both negligent consumption of alcohol ***and*** the negligent furnishing of alcohol. In contrast, legal immunity created by the Alaska-type statutes create a legal fiction that that only consumption of alcohol – not negligently furnishing alcohol – is the only legal proximate cause of alcohol related death and injury. Thus, a provider of alcohol, even when done under the most unreasonable of circumstances and exposing a person to almost certain harm, is never the proximate cause of the death.

Obviously, in the land context, various state legislatures may reasonably disagree as to proper social policy and law. In the land context, the structure and texture of tort liability policy is a proper province of state regulation. However, since this courts decision in *Kermerac v. Compagnie Generale Transatlantique*,[30] this Court has held simply that the owner of a vessel owes the duty of exercising reasonable care to all who are on board for purposes not inimical to his legitimate interests. *Kermerac*

> sought to clear away the tangle of common law concepts pertinent to the duty of care owed to invitees and licensees on land from the duty of care owed to passengers on a ship. It rejected the use of a conceptual framework based on the duties of owners and occupiers of land as adaptable to the peculiar needs of maritime activities. Instead, *Kermerac* created a standard of "reasonable care under the circumstances of each case."[31]

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[30] 358 U.S. 625 (1959).

[31] *Smith v. Southern Gulf Marine Co. No. 2, Inc.*, 791 F.2d 416, 419-420 (5th Cir. 1986).

It is no less true, that federal maritime law should equally avoid the tangle of conflicting social law and policy that characterizes the dramshop/social host liability within the various fifty (50) states. A statutory scheme, as exists in Alaska, which distinguishes between social host and licenses sellers of alcohol, fundamentally conflicts with the basic premise of *Kermerac*, i.e., that the vessel owner always owes a duty of "reasonable care under the circumstances."

In Alaska, liability is solely dependent upon whether the provider of alcohol is selling or giving away the alcohol at a party. Thus, while applying state immunity statutes will clearly result in a hodgepodge of differing results between the various jurisdictions, a more important problem with applying state immunity statutes in the maritime area is that it undercuts the basic tenants of maritime law that "reasonable care under the circumstances" should guide the actions of all vessel owners/captains, if maritime commerce is to be safely conducted. A uniform standard of care for all vessel owners is seriously compromised if the liability is altered based upon whether the owners/captains sell or give away alcohol. Such distinctions are contrary to fundamental characteristics of maritime law which impose a common duty of care upon all vessel owners and captains. Maritime law is unconcerned about the nature of goods being sold, bartered or exchanged. Maritime law is concerned with promoting safe and efficient maritime commerce with respect to all goods and passengers. That goal is not served by a statutory scheme which allocates liability based upon whether a ship owner sells or gives away alcohol. Thus, while state immunity statutes may serve

laudable public policies upon land, they do not promote the fundamental characteristics of maritime law.

CONCLUSION

For the foregoing reasons, Petitioners respectfully urge this Court to grant the Petition for Writ of *Certiorari* and reverse the decision of the Alaska Supreme Court.

Respectfully submitted,

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152 P.3d 1144

THE SUPREME COURT OF THE STATE OF ALASKA

ALMERIA CHRISTIANSEN, in her capacity as the Administrator of the Estate of WESLEY J. CHRISTIANSEN, and her personal capacity, Appellant, v. KENNY CHRISTIANSEN, Appellee.	Supreme Court No. S-11789 Superior Court No. 3KO-02-262CI OPINION No. 6094 – January 26, 2007

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kodiak, Joel H. Bolger, Judge.

Appearances: Michael J. Walleri, Law Offices of Michael J. Walleri, Fairbanks, for Appellant. Laura L. Farley, Farley & Graves, P.C., Anchorage, for Appellee.

Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti, Justices.

BRYNER, Chief Justice.

I. INTRODUCTION

After drinking on his cousin Kenny's boat, Wesley Christiansen fell from a dock and drowned. Wesley's widow, Almeria Christiansen, sued Kenny, arguing that Kenny had a duty to supervise, monitor, and control Wesley's drinking. Almeria acknowledged that Kenny could not be held liable under Alaska's dram shop law, which immunizes social hosts, but argued that he owed

Wesley duties under federal maritime law that precluded applying state law. The superior court disagreed and granted Kenny's motion for partial summary judgment. Almeria appeals. Because we conclude that Alaska's social-host immunity provision neither materially prejudices a characteristic feature of maritime law nor interferes with its proper harmony and uniformity, we affirm the superior court's decision.

II. FACTS AND PROCEEDINGS

Wesley Christiansen arrived at the city dock in Old Harbor, Kodiak, after a day of duck hunting. He brought beer and may have been intoxicated when he arrived. Wesley's cousin Kenny was at the dock, having recently returned from a hunting trip of his own. Kenny was aboard his fishing vessel, the MEKENNA C, socializing with his brother and a few friends. Wesley boarded Kenny's vessel and proceeded to drink while aboard. Some of the alcohol Wesley consumed may have been supplied by Kenny.

Some time later Wesley announced that he had to urinate. One of Kenny's passengers suggested that Wesley could urinate off the end of the dock. Wesley disembarked from the MEKENNA C and was not seen again until his body was discovered floating in the water near the MEKENNA C's starboard side. State troopers later concluded that Wesley had fallen from the end of the dock.

Almeria Christiansen filed a wrongful death suit against Kenny, alleging in part that Kenny had violated duties owed to Wesley imposed by virtue of Kenny's status as owner and captain of the MEKENNA C.

Kenny contested liability and moved for summary judgment on the ground that, as a social host, he owed no legal duty to Wesley under Alaska law.[1] In opposition, Almeria argued that federal maritime law applied and that it imposed a general duty of "reasonable care" on Kenny, as well as specific duties to ensure passengers a "safe disembarkment" and to "supervise" and "control" their alcohol consumption while aboard his vessel. She acknowledged, though, that under Alaska's dram shop act Kenny owed no duties to Wesley "as a social host."

Superior Court Judge Joel H. Bolger granted partial summary judgment for Kenny, ruling that Alaska law governed the case and that, under Alaska's dram shop act, Kenny had no duty to control Wesley's drinking. The judge also rejected Almeria's claim for negligent disembarkation, noting that Wesley had fallen from the dock, not from Kenny's boat. Judge Bolger nevertheless allowed Almeria's case to proceed on the limited theory that Kenny might have caused the dock to become dangerously icy by operating a bilge pump that coated the dock with mist and ice. Almeria proceeded to a jury trial on this new icy-dock theory.

After being instructed that "[a] person who provides alcoholic beverages to another person is not liable for injuries resulting from that person's intoxication, unless the person who provides the alcohol holds a liquor license," the jury returned a special verdict answering "No" to the question, "Was the defendant Kenny Christiansen negligent?"

Almeria appeals.

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[1] *See* AS 04.21.020.

III. DISCUSSION

On appeal, Almeria challenges the superior court's order granting partial summary judgment.[2] Almeria argues that the court should have held that maritime law imposed a duty on Kenny to "monitor," "supervise," and possibly even "control" Wesley's drinking and that the superior court should not have applied Alaska's social-host immunity statute in this case. She claims that the superior court committed reversible error by "erroneously appl[ying] a state law limitation on a federal maritime cause of action."

In granting Kenny's motion for partial summary judgment, the superior court assumed that the facts of this case triggered admiralty jurisdiction.[3] We follow the same approach here. But the "exercise of admiralty jurisdiction . . . does not result in [the] automatic displacement of state law."[4] Admiralty jurisdiction precludes application of state law only when it would work a "material prejudice to the characteristic features of [maritime] law" or would "interfere[] with the proper harmony and uniformity of

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[2] We review awards of summary judgment *de novo*. *See, e.g., Bennett v. Weimar*, 975 P.2d 691, 694 (Alaska 1999).

[3] A tort case falls within admiralty jurisdiction when it satisfies the tests of "location" and "connection" as described by the United States Supreme Court in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

[4] *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 206 (1996) (quoting *Jerome B. Grubart, Inc.*, 513 U.S. at 545) (internal quotation marks omitted).

[maritime] law in its international and interstate relations."[5]

The state law at issue here, AS 04.21.020(a), provides that only persons who are licensed to sell alcohol may be held civilly liable for injuries resulting from a recipient's intoxication.[6] By limiting liability to licensed sellers, this provision of Alaska's dram shop act absolves social hosts of civil liability for harm resulting from the intoxication of their guests.[7] In so providing, Alaska's law follows the trend reflected in many state dram shop and civil damages statutes. At common law, dram shop immunity generally

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[5] *Kodiak Island Borough v. Exxon Corp.*, 991 P.2d 757, 766 (Alaska 1999) (quoting *Hughes v. Foster Wheeler Co.*, 932 P.2d 784, 787 (Alaska 1997)).

[6] AS 04.21.020, "Civil liability of persons providing alcoholic beverages," provides, in relevant part:

> (a) Except as provided under (b) and (d) of this section, *a person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license* authorized under AS 04.11.080-04.11.220 or is an agent or employee of such a licensee. . . .

(Emphasis added.)

[7] *See Chokwak v. Worley*, 912 P.2d 1248, 1254 (Alaska 1996) (AS 04.21.020 extends civil immunity to social hosts who provide alcohol to minors); *Mulvihill v. Union Oil Co.*, 859 P.2d 1310, 1311-12 (Alaska 1993) (AS 04.21.020 extended civil immunity to employer acting as social host by providing alcohol to employees at holiday party). *But see Gordon v. Alaska Pacific Bancorporation*, 753 P.2d 721, 723 (Alaska 1988) (claim not barred by AS 04.21.020 where social host should have protected a guest from the harmful presence of other intoxicated partygoers).

extended to commercial providers and social hosts alike.[8] But most states have now narrowed the scope of dram shop immunity by adopting laws that allow commercial providers of alcohol to be held accountable for furnishing liquor to intoxicated persons under certain circumstances, while continuing to hold social hosts immune:

> Generally, [dram shop] statutes only permit a cause of action to be brought against a person or entity who is in the business of providing liquor for commercial remuneration, such as a tavern owner, and not against one who furnishes alcohol as a mere act of hospitality or courtesy. . . . [C]ivil-damages acts and dram shop statutes generally do not apply to social hosts[.][9]

To determine whether the superior court could apply Alaska's dram shop act in a case brought under maritime law, the first question we must resolve is whether applying a law of this kind would result in "material prejudice to [any] characteristic feature[] of maritime law."[10] United States Supreme Court precedent suggests that a characteristic feature of admiralty law is one that "originated in admiralty" or "has exclusive application there[in]."[11]

Almeria argues that AS 04.21.020's social-host immunity provision violates this test because federal maritime

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[8] Diane Schmauder Kane, Annotation, *Social Host's Liability for Death or Injuries Incurred by Person to Whom Alcohol was Served*, 54 A.L.R. 5th 326 (1997).

[9] *Id.*

[10] *Kodiak Island Borough*, 991 P.2d at 766 (quoting *Hughes*, 932 P.2d at 787).

[11] *Id.* at 767 (quoting *American Dredging Co. v. Miller*, 510 U.S. 443, 450 (1994)).

law imposed a duty on Kenny to "monitor," "supervise," and possibly even "control" Wesley's drinking. In support of this assertion she cites two federal district court cases and one decision by the Fifth Circuit Court of Appeals.[12] But these cases fail to support Almeria's claim. None of them deals with a vessel owner who acted merely as a social host, and none purports to recognize or create a general rule of maritime law that would abrogate the traditional social-host immunity rule as it existed at common law.

Given the lack of analogous precedent in maritime law, the superior court found no "controlling federal rule" imposing liability on an unlicensed social host. We agree. In the absence of a controlling federal rule, we conclude that Almeria has not demonstrated that a characteristic feature of maritime law would be materially prejudiced by applying AS 04.21.020 in this case.

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[12] *See Reyes v. Vantage Steamship Co., Inc.*, 558 F.2d 238 (5th Cir. 1977) (holding, in a maritime wrongful death action filed after intoxicated crewman jumped from his vessel and drowned while swimming toward a buoy, that vessel owner could be liable for apportioned fault because owner acted "at least negligently" by regularly selling large quantities of alcohol to crewmembers in violation of applicable federal regulations); *Young v. Players Lake Charles, L.L.C.*, 47 F.Supp.2d 832 (S.D. Tex. 1999) (denying motion to dismiss under state dram shop immunity provision and holding casino riverboat operator potentially liable under maritime law for damages resulting from drunken driving homicide caused by intoxicated casino patron while driving home after casino served him numerous drinks as inducement to gamble); *Thier v. Lykes Bros., Inc.*, 900 F.Supp. 864 (S.D. Tex. 1995) (vessel owner held liable for injuries to seaman cadet caused by cadet's supervising officer, who became intoxicated aboard the vessel while it was in port and recklessly caused an auto accident while driving the cadet to a restaurant).

We must separately ask whether applying AS 04.21.020's social-host immunity provision would interfere with the "proper harmony and uniformity of maritime law."[13] Almeria maintains that AS 04.21.020 would interfere with the uniform application of maritime law's wrongful death cause of action.[14] Specifically, she asserts that "[w]hile general maritime law does not limit a state from providing for remedies not present in federal maritime law, state law may not impede[] remedies created under federal maritime law." Almeria argues that applying AS 04.21.020 in this case would "impose [a] limit[] on recovery which would infringe upon the right of recovery created in federal law." Kenny responds that Alaska is free to apply its own law here because there is no "controlling federal law" governing "unlicensed social host[s]."[15]

We have previously noted that "[c]ourts apply a balancing test to decide issues of harmony and uniformity."[16] As one commentator explains,

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[13] *Kodiak Island Borough*, 991 P.2d at 767 (citation omitted).

[14] *See Norfolk Shipbuilding & Drydock Corp. v. Garris*, 532 U.S. 811, 820 (2001) ("The maritime cause of action that *Moragne* established for unseaworthiness is equally available for negligence."); *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 409 (1970) ("[A]n action does lie under general maritime law for death caused by violation of maritime duties.").

[15] *Cf. Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 320-21 (1955) (holding that in the absence of federal legislation or conflicting rule judicially established by federal courts, regulation of marine insurance left to states); THOMAS J. SCHOENBAUM, 1 ADMIRALTY AND MARITIME LAW § 4-3, at 169 (4th ed. 2004) (state law may "fill gaps and supplement" the maritime law).

[16] *Kodiak Island Borough*, 991 P.2d at 767 (citing *Kossick v. United Fruit Co.*, 365 U.S. 731, 738-42 (1961); *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 442-48 (1960); *Just v. Chambers*, 312 U.S.

(Continued on following page)

> [S]tate law will not be preempted if the state has a strong interest in the subject matter and there is correspondingly little need for uniformity; if, however, there is a strong federal interest, state law will not be allowed to impair the essential uniformity of maritime law.[17]

We are not convinced that applying AS 04.21.020 in this case would impede any strong federal interest. The maritime cause of action for wrongful death advances the federal interest in affording decedents' representatives an avenue for recovery; but beyond establishing the maritime law's interest in ensuring the availability of an action for wrongful death, Almeria identifies no strong federal interest in dictating the precise scope of an actionable wrongful death claim.

In fact, as we have already observed, Almeria cites no maritime cases that have imposed social-host liability under circumstances comparable to those at issue here. To be sure, under maritime law vessel owners owe visitors aboard their vessels a general duty of "exercising reasonable care under the circumstances of each case."[18] But given the absence of case law extending this duty to a social-host setting like the one here, we fail to see any "strong federal interest" in demanding a uniform rule that would impose social-host liability; nor do we see any reasonable possibility that Alaska's social-host immunity

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383 (1941); *Ballard Shipping Co. v. Beach Shellfish*, 32 F.3d 623, 628 (1st Cir. 1994); *Brockington v. Certified Elec. Inc.*, 903 F.2d 1523, 1530 (11th Cir. 1990)).

[17] SCHOENBAUM, *supra* note 15, at 169-70 (footnotes omitted).

[18] *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959).

law might impair the essential uniformity of maritime law.[19]

IV. CONCLUSION

In summary, because the superior court correctly ruled that AS 04.21.020 could be applied in this case without materially prejudicing a characteristic feature of maritime law or interfering with its proper harmony and uniformity, we AFFIRM the superior court's judgment.

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[19] *Cf. Meyer v. Carnival Cruise Lines*, 1994 WL 832006, at *3-4 (N.D. Cal. Dec. 29, 1994) (noting that "extensive research has uncovered no federal maritime dram shop rule" and holding that need for uniformity does not preclude applying California dram shop act in negligence action under maritime law for injuries suffered by cruise ship passenger at sea).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA THIRD JUDICIAL DISTRICT AT KODIAK

ALMERIA CHRISTIANSEN, in her capacity as the Administrator of the Estate of WESLEY J. CHRISTIANSEN, and her personal capacity, Plaintiff, v. KENNY CHRISTIANSEN and THE CITY OF OLD HARBOR, Defendants.	Case No. 3KO-02-262CI

FINAL JUDGMENT

The above-entitled matter having come regularly before this Court on the 17th day of November 2004 for reading of the jury verdict, Plaintiff being present and through counsel, Michael Walleri and Defendant Ken Christiansen being present and through counsel, Laura L. Farley of Farley & Graves, P.C., final judgment is hereby entered by jury verdict in favor of Defendant Ken Christiansen on all claims brought against him by Plaintiff.

As prevailing party Defendant Ken Christiansen is hereby awarded attorneys' fees in the amount of $24,891.25 [/s/ JB] and awardable costs incurred in the amount of $___; for a total judgment of $___ on which interest shall accrue at the rate of ___% per annum until paid in full.

LET EXECUTION ISSUE.

DATED this 7th day of DECEMBER 2004.

/s/ Joel H. Bolger
The Honorable Joel H. Bolger
[SEAL]